IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 9820 of 2007(R)

PETITIONER:

T.JAYACHANDRAN, S/O K.NARAYANAN NAIR,
RESIDING AT KUTTAMATH, PONMALAM, P.O.CHERUVATHUR,
KASARAGOD DISTRICT.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA

RESPONDENTS:

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1. SENIOR DIVISIONAL MANAGER,
DIVISIONAL OFFICE, LIFE INSURANCE CORPORATION OF
INDIA, JEEVAN PRAKASH, P.B.NO.177,
KOZHIKODE-1.

2. ZONAL MANAGER,
LIFE INSURANCE CORPORATION OF INDIA,
ZONAL OFFICE, L.I.C.BUILDING,
ANNASALI, CHENNAI.

3. THE MANAGER, LIFE INSURANCE CORPORATION
OF INDIA, NILESWAR BRANCH, POST NILESWAR,
KASARAGOD DISTRICT.

4. LIFE INSURANCE CORPORTION OF INDIA,
REPRESENTED BY ITS CHAIRMAN, CENTRAL OFFICE,
JEEVAN BIMA MARGH, BANKBAY RECLAMATION,
CHURCH GATE, BOMBAY.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SMT.THANKOM.G

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER DT. 11.12.2006 OF THE 1ST RESPONDENT

EXT.P2: -DO- OF THE EXPLANATION DT. 28.2.2007 OF THE PETITIONER

EXT.P4: -DO- OF THE EXPLANATION DT. 5.1.2007

EXT.P5: -DO- OF THE ORDER DT.3.3.2007 OF THE 1ST RESPONDENT

EXT.P6: -DO- OF THE LETTER DT. 6.3.2007 ISSUED BY THE 3RD RESPONDENT

RESPONDENTS EXTS:

EXT.R4(a): TRUE COPY OF THE INTIMATION RECEIVED FROM THE HONOURABLE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

EXT.R4(b): -DO- OF THE LETTER ISSUED BY THE LEARNED MAGISTRATE

EXT.R4(c) -DO- OF THE CERTIFICATE ISSUED BY SUPDT. OF CENTRAL PRISON, KANNUR.

jj /True copy/

P.A.to Judge

V. GIRI ,J.

WP(C).NO.9820 of 2007

Dated this the 12th day of November, 2007

JUDGMENT

Petitioner, who was employed in the Life Insurance Corporation as a sub staff, challenges Ext.P5 order passed by the disciplinary authority under Regulation 39(1)(f) of the Life Insurance Corporation of India (Staff) Regulations 1960 (hereinafter referered to as *`Regulations')*. By Ext.P5 order, the petitioner has been removed from service. This has been done on the ground that disciplinary authority was satisfied that the petitioner acted in the manner detrimental to the interest of the Corporation and prejudicial to good conduct and thereby committed breach of *Regualtions-21, 24, 34 and 35.* Apparently, this came about because the petitioner had been prosecuted for an offence under Section 138 of the Negotiable Instruments Act in STC Nos.344 and 345 of 2006 before the Additional Chief Judicial Magistrate, Thalassery. On a reading of Ext.P5, it is seen that removal from service is not merely on the basis of conviction of the petitioner in the criminal court. Taking note of the said aspect, disciplinary authority has referred to the breach

of the *Regulations* for imposing penalty on the petitioner.

2. During the pendency of the writ petition, the petitioner compounded the offence with the original complainant and this resulted in Exts.P7 and P8 judgments of the appellate court which shows that the matter was settled out of court and the offence was compounded thereby acquitting the accused under Section 320(8) of the Cr.P.C. Learned counsel for the petitioner Shri Hari Rao submits that in circumstances where the offence has been compounded, and ultimately the petitioner has been acquitted by the appellate court, Ext.P5 should be interfered with. In my view, Ext.P5 does not seem to be purely rested on the conviction of the petitioner in the criminal court. Though that is also referred to in Ext.P5, reference is made therein to Regulation Nos.21, 24, 34 and 35 and the alleged breach of the same to take disciplinary action against the petitioner and ultimately this resulted in Ext.P4. In the circumstances, compounding of the offence by itself will not efface Ext.P5, but of course, compounding of the offence under Section 138 of the Negotiable Instruments Act can legitimately be taken note of by the appellate authority under the `*Regulations*'. In my view, the petitioner should have challenged Ext.P5 order in an appeal

before the statutory appellate authority. In the circumstances, the writ petition is disposed of relegating the petitioner to the alternate remedy in terms of the `*Regulations*' and if the petitioner files an appeal before the second respondent, within a period of one month, it shall be treated as within time. It is open to the petitioner to raise all contentions in the appeal, if so filed including reliance on Exts.P7 and P8 judgments. If such appeal is filed within the time aforementioned, the second respondent shall, after hearing the petitioner, take a decision thereon within a period of three months thereafter, according to law.

V. GIRI, JUDGE

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